

ORDINANCE NO. 27291

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
CHAPTER 12.02 OF TITLE 12 OF THE SAN JOSE  
MUNICIPAL CODE TO REPEAL AN OBSOLETE  
DEFINITION, AMENDING CHAPTER 12.04 RELATING TO  
PENALTIES AND NOTICE OF VIOLATIONS, AND  
AMENDING CHAPTER 12.06 BY AMENDING THE  
CAMPAIGN CONTRIBUTION ORDINANCE RELATING TO  
DEFINITIONS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 12.02.060 of Chapter 12.02 of Title 12 of the San José Municipal Code is hereby repealed.

SECTION 2. Section 12.04.110 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

**12.04.110 Civil Penalties**

- A. Civil penalties shall be imposed by resolution of the commission.
- B. Except as otherwise specified in Title 12, the commission may impose penalties of up to Five Thousand Dollars (\$5,000) for each violation.
- C. If any civil penalty imposed by the commission is not timely paid, the City Clerk shall refer the debt to the Director of Finance for collection.

SECTION 3. Section 12.04.120 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

**12.04.120 Campaign Contribution Violations**

- A. In determining if penalties should be imposed for violations of Chapter 12.06 and the amount of any such penalties, the commission shall consider all the relevant circumstances surrounding the case including:
1. The severity of the violation;
  2. The presence or absence of any intention to conceal, deceive, or mislead;
  3. Whether the violation was deliberate, negligent or inadvertent;
  4. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this Chapter;
  5. Whether the respondent has a prior record of violations of City law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
  6. The degree to which the respondent cooperated with the investigation;
  7. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this Chapter.
- B. The amount of the penalties, other than for a late contribution report pursuant to Section 12.06.910 shall be up to Five Thousand Dollars (\$5,000) and/or the value of any contribution(s) or gift received in violation of Chapter 12.06.

- C. A candidate or committee failing to file a late contribution report pursuant to Section 12.06.910 shall be required to pay a penalty in an amount equal to the unreported contribution, but not less than One Thousand Dollars (\$1,000).
- D. The City Clerk or City Attorney may put persons on notice of a potential violation of the requirements of Chapter 12.06, whether or not a complaint is filed with the Commission.

**SECTION 4.** Section 12.06.010 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

**12.06.010 Definitions**

The following definitions used in this Chapter shall have the meanings set forth below. Except as otherwise provided here, the terms and provisions of this Chapter shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Government Code Section 81000, *et seq.*) and the regulations of the California Fair Political Practices Commission, as amended.

**SECTION 5.** Section 12.06.130 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

**12.06.130 Independent Expenditure**

- A. “Independent expenditure” shall mean an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. An expenditure that is made to or at the

behest of a candidate or controlled committee is not an independent expenditure.

- B. Any expenditure in aid or in opposition to a Council or Mayoral candidate which is not an “independent expenditure” is deemed to be a contribution to that candidate, subject to the limitations of this Chapter.

SECTION 6. Section 12.06.220 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

**12.06.220 Applicability to Agents**

- A. “Agent” shall mean any person who has express or implied authority to make or to authorize the making of expenditures on behalf of a candidate or who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. An “agent” is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate’s campaign, with or without compensation, where that person’s duties and/or actions reflect or require direct knowledge of the candidate’s campaign strategy, plans and needs.
- B. The prohibitions and requirements of this Chapter applicable to a candidate shall also apply to the candidate's agent.

PASSED FOR PUBLICATION of title this 16<sup>th</sup> day of November, 2004, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, GREGORY,  
LeZOTTE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: DANDO

DISQUALIFIED: NONE

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, CMC  
City Clerk